

CHAPTER 59 ENTERPRISE ZONES

261—59.1(15E) Purpose. The purpose of the establishment of an enterprise zone in a county or city is to promote new economic development in economically distressed areas. Businesses that are eligible and locating or located in an enterprise zone and approved by the department are authorized under this program to receive certain tax incentives and assistance. The intent of the program is to encourage communities to target resources in ways that attract productive private investment in economically distressed areas within a county or city. Projects, except for those of development businesses, that have already been initiated before receiving formal application approval by the department shall not be eligible for tax incentives and assistance under this program.

261—59.2(15E) Definitions.

“*Act*” means Iowa Code Supplement sections 15E.191 through 15E.196 as amended by 1998 Iowa Acts, House Files 2164, 2395, section 17, and 2538.

“*Average county wage*” means the average the department calculates using the most current four quarters of wage and employment information as provided in the Quarterly Covered Wage and Employment Data report as provided by the Iowa department of workforce development. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.

“*Average regional wage*” means the wage calculated by the department using a methodology in which each particular county is considered to be a geographic center of a larger economic region. The wage threshold for the central county is calculated using the average wage of that county, plus each adjoining county, so that the resulting figure reflects a regional average that is representative of the true labor market area. In performing the calculation, the greatest importance is given to the central county by “weighting” it by a factor of four, compared to a weighting of one for each of the other adjoining counties. The central county is given the greatest importance in the calculation because most of the employees in that central county will come from the same county, as compared to commuters from other adjoining counties.

“*Board*” means the Iowa department of economic development board.

“*Commission*” or “*enterprise zone commission*” means the enterprise zone commission established by a city or county to review applications for incentives and assistance for businesses located within or requesting to locate within certified enterprise zones over which the enterprise zone commission has jurisdiction under the Act.

“*Contractor*” or “*subcontractor*” means a person who contracts with an eligible business or subcontracts with a contractor for the provision of property, materials, or services for the construction or equipping of a facility, located within the economic development zone, of the eligible business.

“*Department*” means the Iowa department of economic development.

“*Development business*” means a developer or development contractor that constructs, expands or rehabilitates a building space with a minimum capital expenditure of \$500,000.

“*Director*” means the director of the Iowa department of economic development.

“*DRF*” means the Iowa department of revenue and finance.

“*Eligible business*” means a business which meets the requirements of rule 261—59.5(15E).

“*Enterprise zone*” means a site or sites certified by the department of economic development board for the purpose of attracting private investment within economically distressed counties or areas of cities within the state.

“Full-time” means the employment of one person:

1. For 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations and other paid leave, or
2. The number of hours or days per week, including paid holidays, vacations and other paid leave, currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

“Project” means the activity, or set of activities, proposed in the application by the business, which will result in accomplishing the goals of the enterprise zone program, and for which the business requests the benefits of the enterprise zone program.

“Project initiation” means any one of the following: the start of construction of new or expanded buildings; the start of rehabilitation of existing buildings; the purchase or leasing of existing buildings; or the installation of new machinery and equipment or new computers to be used in the operation of the business’s project. The purchase of land or signing an option to purchase land or earth moving or other site development activities not involving actual building construction, expansion or rehabilitation shall not constitute project initiation. This definition does not apply to eligible development businesses.

“Project jobs” means all of the new jobs to be created by the location or expansion of the business in the enterprise zone. For the project jobs, the business shall pay an average wage that is at or greater than 90 percent of the lesser of the average county wage or average regional wage, as determined by the department. However, in any circumstance, the wage paid by the business for the project jobs shall not be less than \$7.50 per hour.

“Tax credit certificate” means a document issued by the department to an eligible business which indicates the amount of unused investment tax credit that the business is requesting to receive in the form of a refund. A tax credit certificate shall contain the taxpayer’s name, address, tax identification number, the date of project completion, the amount of the tax credit certificate, the tax year for which the credit will be claimed, and any other information required by DRF or the department.

“Value-added agricultural products” means agricultural products which, through a series of activities or processes, can be sold at a higher price than the original purchase price.

261—59.3(15E) Enterprise zone certification. An eligible county or a city may request the board to certify an area meeting the requirements of the Act and these rules as an enterprise zone. Zone designations will remain in effect for a period of ten years from the date of the board’s certification as a zone. A county or city may request zone designation under subrule 59.3(1) or 59.3(2) at any time prior to July 1, 2003.

59.3(1) County—eligibility.

a. Requirements. To be eligible for enterprise zone designation, a county must meet at least two of the following criteria:

- (1) The county has an average weekly wage that ranks among the bottom 25 counties in the state based on the 1995 annual average weekly wage for employees in private business.
- (2) The county has a family poverty rate that ranks among the top 25 counties in the state based on the 1990 census.
- (3) The county has experienced a percentage population loss that ranks among the top 25 counties in the state between 1990 and 1995.
- (4) The county has a percentage of persons 65 years of age or older that ranks among the top 25 counties in the state based on the 1990 census.

b. Zone parameters. Up to 1 percent of a county area may be designated as an enterprise zone. A county may establish more than one enterprise zone. The total amount of land designated as enterprise zones under subrules 59.3(1) and 59.3(2) shall not exceed in the aggregate 1 percent of the total county area (excluding any area which qualifies as an urban or rural enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993). An eligible county containing a city whose boundaries extend into an adjacent county may establish an enterprise zone in an area of the city located in the adjacent county if the adjacent county's board of supervisors adopts a resolution approving the establishment of the enterprise zone in the city and the two counties enter into an agreement pursuant to Iowa Code chapter 28E regarding the establishment of the enterprise zone.

59.3(2) City—eligibility.

a. Requirements. To be eligible for enterprise zone designation, a city (population of 24,000 or more as shown by the 1990 certified federal census) must meet at least two of the following criteria:

- (1) The area has a per capita income of \$9,600 or less based on the 1990 census.
- (2) The area has a family poverty rate of 12 percent or higher based on the 1990 census.
- (3) Ten percent or more of the housing units are vacant in the area.
- (4) The valuations of each class of property in the designated area is 75 percent or less of the citywide average for that classification based upon the most recent valuations for property tax purposes.
- (5) The area is a blighted area, as defined in Iowa Code section 403.17.

b. Population limits. A city with a population of 24,000 or more, as shown by the 1990 certified federal census, may request enterprise zone certification by the board. The zone shall consist of one or more contiguous census tracts, as determined in the most recent federal census, or alternative geographic units approved by the department, for that purpose. In creating an enterprise zone, an eligible city may designate as part of the area tracts or approved geographic units located in a contiguous city if such tracts or approved geographic units otherwise meet the criteria on their own and the contiguous city agrees to be included in the enterprise zone.

c. Zone parameters. A city may establish more than one enterprise zone. Up to 1 percent of the county in which the city is located may be designated as enterprise zones. If there is an area in the city which meets the requirements for eligibility for an urban or rural enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, such area shall be designated by the state as an enterprise zone. (The area meeting the requirements for eligibility for an urban or rural enterprise community shall not be included for the purpose of determining the 1 percent aggregate area limitation for enterprise zones.)

59.3(3) Designation procedures.

a. Request with supporting documentation. All requests for designation shall include the following:

- (1) Documentation that meets the distress criteria of Iowa Code Supplement section 15E.194.
- (2) A legal description of the proposed enterprise zone area and a detailed map showing the boundaries of the proposed enterprise zone.
- (3) Certification that the enterprise zone to be designated is within the overall limitation that may not exceed in the aggregate 1 percent of the county area and that the boundaries of the area to be designated are under the jurisdiction of the city or county requesting the designation. If the proposed county enterprise zone contains a city whose boundaries extend into an adjacent county, documentation of the resolution of the board of supervisors of the adjacent county approving the establishment of the zone and a copy of an executed 28E agreement must be submitted to the department as part of the request for zone certification.

(4) Resolution of the city council or board of supervisors, as appropriate, requesting designation of the enterprise zone(s). Included within this resolution may be a statement of the schedule of value-added property tax exemptions that will be offered to all eligible businesses that may locate or expand within the proposed enterprise zone. If a property tax exemption is made applicable only to a portion of the property within the enterprise zone, the designation request submitted to the department must include a description of the uniform criteria which further some planning objective that has been established by the city or county enterprise zone commission and approved by the eligible city or county. Examples of acceptable "uniform criteria" that may be adopted include, but are not limited to, wage rates, capital investment levels, types and levels of employee benefits offered, job creation requirements, and specific targeted industries. "Planning objectives" may include, but are not limited to, land use, rehabilitation of distressed property, or "brownfields" remediation.

This schedule of value-added property tax exemptions may be approved at the time of zone designation request, but must be approved by the city council or board of supervisors, as appropriate, before the establishment of the local enterprise zone commission. This schedule of value-added property tax exemptions may also include the other property tax exemptions or other property tax related incentives that may be used in conjunction with the enterprise zone such as property tax exemptions that may exist in Urban Revitalization Areas or Tax Increment Financing (TIF) districts that may exist within Urban Renewal Areas. Property tax exemptions authorized under Iowa Code chapter 427B may not be used, as stated in Iowa Code section 427B.6, in conjunction with property tax exemptions authorized by city council or county board of supervisors within the local enterprise zone. The city or county shall forward a copy of the official resolution listing the property tax exemption schedule(s) to the department and to the local assessor.

b. Board review. The board will review requests for enterprise zone certification. The board may approve, deny, or defer a request for zone certification.

c. Notice of board action. The department will provide notice to a city or county of the board's certification, denial, or deferral of the city's or county's request for designation of an area as an enterprise zone. If an area is certified by the board as an enterprise zone, the notice will include the date of the zone certification and the date this certification expires.

d. Amendments and decertification. A certified enterprise zone may be amended or decertified upon application of the city or county originally applying for the zone designation. However, an amendment shall not extend the zone's ten-year expiration date, as established when the zone was initially certified by the board. After July 1, 2003, the statutory deadline for cities and counties to request zone certification, an amendment shall not add area to a certified enterprise zone. An amendment or decertification request shall include, but is not limited to, the following information: reason(s) for the amendment or decertification and confirmation that the amended zone meets the requirements of the Act and these rules. The board will review the request and may approve, deny, or defer the proposed amendment or decertification.

59.3(4) *County not eligible under subrule 59.3(1).* Rescinded IAB 1/23/02, effective 2/27/02.

59.3(5) *City or county with business closure.*

a. Requirements. A city of any size or any county may designate an enterprise zone at any time prior to July 1, 2010, when a business closure occurs involving the loss of full-time employees, not including retail employees, at one place of business totaling at least 1,000 employees or 4 percent of the county's resident labor force based upon the most recent annual resident labor force statistics from the department of workforce development, whichever is lower.

b. Zone parameters. The enterprise zone may be established on the property of the place of business that has closed and the enterprise zone may include an area up to an additional one mile adjacent to the property. The area meeting the requirements for enterprise zone eligibility under this subrule shall not be included for the purpose of determining the area limitation pursuant to Iowa Code section 15E.192, subsection 4.

c. *Certification procedures.* All requests for certification shall be made using the application provided by the department. The board will review requests for enterprise zone certification. The board may approve, deny, or defer a request for zone certification.

261—59.4(15E) Enterprise zone commission. Following notice of enterprise zone certification by the board, the applicant city or county shall establish an enterprise zone commission. The commission shall review applications from eligible businesses and eligible housing businesses located in the zone and forward approved applications to the department for final review and approval.

59.4(1) Commission composition.

a. *County enterprise zone commission.* A county shall have only one enterprise zone commission to review applications for incentives and assistance for businesses (including eligible housing businesses) located or requesting to locate within a certified enterprise zone. The enterprise zone commission shall consist of nine members. Five of these members shall be comprised of:

- (1) One representative of the county board of supervisors,
- (2) One member with economic development expertise selected by the department,
- (3) One representative of the county zoning board,
- (4) One member of the local community college board of directors, and
- (5) One representative of the local workforce development center selected by the Iowa workforce development department unless otherwise designated by a regional advisory board.

The five members identified above shall select the remaining four members. If the enterprise zone consists of an area meeting the requirements for eligibility for an urban or rural enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, one of the remaining four members shall be a representative of that community. If the enterprise zone is located in a county that does not have a county zoning board, the representatives identified in 59.4(1)“a”(1), (2), (4), and (5) shall select an individual with zoning expertise to serve as a member of the commission.

b. *City enterprise zone commission.* A city in which an eligible enterprise zone is certified shall have only one enterprise zone commission. A city with a population of 24,000 or more which designates an enterprise zone pursuant to Iowa Code Supplement section 15E.194, subsection 2, and in which an eligible enterprise zone is certified shall establish an enterprise zone commission to review applications from qualified businesses located within or requesting to locate within an enterprise zone to receive incentives or assistance. The commission shall consist of nine members. Six of these members shall consist of:

- (1) One representative of an international labor organization,
- (2) One member with economic development expertise chosen by the department of economic development,
- (3) One representative of the city council,
- (4) One member of the local community college board of directors,
- (5) One member of the city planning and zoning commission, and
- (6) One representative of the local workforce development center selected by the Iowa workforce development department unless otherwise designated by a regional advisory board.

The six members identified above shall select the remaining three members. If the enterprise zone consists of an area meeting the requirements for eligibility for an urban enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, one of the remaining three members shall be a representative of that community. If a city contiguous to the city designating the enterprise zone is included in an enterprise zone, a representative of the contiguous city, chosen by the city council, shall be a member of the commission.

59.4(2) Department review of composition.

a. Once a county or city has established an enterprise zone commission, the county or city shall provide the department with the following information to verify that the commission is constituted in accordance with the Act and these rules:

- (1) The name and address of each member.
- (2) An identification of what group the member is representing on the commission.
- (3) Copies of the resolution or other necessary action of a governing body, as appropriate, by which a member was appointed to the commission.
- (4) Any other information that the department may reasonably request in order to permit it to determine the validity of the commission's composition.

b. If a city has established an enterprise zone commission prior to July 1, 1998, the city may petition to the department of economic development to change the structure of the existing commission. A petition to amend the structure of an existing city enterprise zone commission shall include the following:

- (1) The names and addresses of the members of the existing commission.
- (2) The date the commission was approved by the department.
- (3) The proposed changes the city is requesting in the composition of the commission.
- (4) Copies of the resolution or other necessary action of a governing body, as appropriate, by which a member was appointed to the commission.

59.4(3) Commission policies and procedures. Each commission shall develop policies and procedures which shall, at a minimum, include:

- a. Processes for receiving and evaluating applications from qualified businesses seeking to participate within the enterprise zone; and
- b. Operational policies of the commission such as meetings; and
- c. A process for the selection of commission officers and the filling of vacancies on the commission; and
- d. The designation of staff to handle the day-to-day administration of commission activities.
- e. Additional local eligibility requirements for businesses, if any, as discussed in subrule 59.9(1).

261—59.5(15E) Eligibility and negotiations.

59.5(1) Program categories. To participate in the enterprise zone program, a business must qualify under one of four categories: an eligible business, an alternative eligible business, an eligible housing business, or an eligible development business. Refer to rule 261—59.6(15E) for a description of the eligibility requirements and benefits available to a qualified “eligible business.” Refer to rule 261—59.7(15E) for a description of the eligibility requirements and benefits available to a qualified “alternative eligible business.” Refer to rule 261—59.8(15E) for a description of the eligibility requirements and benefits available to a qualified “eligible housing business.” Refer to rule 261—59.9(15E) for a description of the eligibility requirements and benefits available to a qualified “eligible development business.”

59.5(2) Negotiations. The department reserves the right to negotiate the amount of all program benefits except the following benefits: the new jobs supplemental credit; the value-added property tax exemption; and the refund of sales, service and use taxes paid to contractors and subcontractors. The criteria, as applicable to the category under which the business is applying, to be used in the negotiations to determine the amount of tax incentives and assistance include but are not limited to:

- a. The number and quality of jobs to be created. Factors to be considered include but are not limited to full-time, career path jobs; turnover rate; fringe benefits provided; safety; skill level.
- b. The wage levels of the jobs to be created.
- c. The amount of capital investment to be made.

d. The level of need of the business. Factors to be considered include but are not limited to the degree to which the business needs the tax incentives and assistance in order for the project to proceed. Methods of documenting need may include criteria such as financial concerns; risk of the business's locating in or relocating to another state; or return on investment concerns.

e. The economic impact and cost to the state and local area of providing tax incentives and assistance in relation to the public gains and benefits to be provided by the business. Factors to be considered include but are not limited to the amount of tax credits likely to be used by the business and the impact on the local and state tax base and economic base.

f. Other state or federal financial assistance received or applied for by the business for the project.

59.5(3) *Limitation on negotiations.* The department reserves the right to negotiate benefits for projects that invest over \$10 million. Projects investing \$10 million or less in an enterprise zone will be eligible to receive the maximum investment tax credit and research activities credit allowed by the statute.

261—59.6(15E) Eligible business.

59.6(1) *Requirements.* A business which is or will be located in an enterprise zone is eligible to receive incentives and assistance under the Act if the business meets all of the following:

a. *No closure or reduction.* The business has not closed or reduced its operation in one area of the state and relocated substantially the same operation into the enterprise zone. This requirement does not prohibit a business from expanding its operation in an enterprise zone if existing operations of a similar nature in the state are not closed or substantially reduced.

b. *No retail.* The business is not a retail business or a business whose entrance is limited by a cover charge or membership requirement.

c. *Employee benefits.* The business provides all full-time employees with the option of choosing one of the following:

(1) The business pays 80 percent of both of the following:

1. The cost of a standard medical insurance plan, and
2. The cost of a standard dental insurance plan or an equivalent plan.

(2) The business provides the employee with a monetarily equivalent plan to the plan provided for in subparagraph (1) above.

d. *Wage levels.* The business pays an average wage that is at or greater than 90 percent of the lesser of the average county wage or average regional wage, as determined by the department. However, in any circumstance, the wage paid by the business for the project jobs shall not be less than \$7.50 per hour. The department will periodically calculate, revise and issue the "average county wage" and the "average regional wage" figures that will be used for determining business eligibility in the program. The local enterprise zone commission may establish higher company eligibility wage thresholds if it so desires.

e. *Job creation.* The business expansion or location must result in at least ten full-time project jobs and those project jobs must be maintained for at least ten years. The business shall create these jobs within three years of the effective date of the business's agreement with the department and the city or county, as appropriate. For an existing business in counties with a population of 10,000 or less or in cities with a population of 2,000 or less, the commission may adopt a provision that allows the business to create at least five initial jobs with the additional five jobs to be added within five years. The business shall include in its strategic plan the time line for job creation. If the existing business fails to meet the ten-job creation requirement within the five-year period, all incentives and assistance will cease immediately.

f. Capital investment. The business makes a capital investment of at least \$500,000. If the business will be occupying a vacant building suitable for industrial use, the fair market value of the building and land, not to exceed \$250,000, as determined by the local enterprise zone commission, shall be counted toward the capital investment requirement. An existing business that has been operating in the enterprise zone for at least five years is exempt from the capital investment requirement of this paragraph of up to \$250,000 of the fair market value, as established by an appraisal, of the building and land. The capital investment amount stated in the business's application must be completed within three years of the effective date of the agreement described in rule 59.9(15E).

59.6(2) Additional information. In addition to meeting the requirements under subrule 59.6(1), an eligible business shall provide the enterprise zone commission with all of the following:

a. The long-term strategic plan for the business, which shall include labor and infrastructure needs.

b. Information dealing with the benefits the business will bring to the area.

c. Examples of why the business should be considered or would be considered a good business enterprise.

d. The impact the business will have on other Iowa businesses in competition with it.

e. An affidavit that it has not, within the last five years, violated state or federal environmental and worker safety statutes, rules, and regulations or if such violation has occurred that there were mitigating circumstances or such violations did not seriously affect public health or safety or the environment.

59.6(3) Benefits. The department reserves the right to negotiate the amount of all program benefits except the following benefits: the new jobs supplemental credit; the value-added property tax exemption; and the refund of sales, service and use taxes paid to contractors and subcontractors.

The following incentives and assistance may be available to an eligible business within a certified enterprise zone, subject to the amount of incentives and assistance negotiated by the department with the eligible business and agreed upon as described in an executed agreement, only when the average wage of all the new project jobs meets the minimum wage requirements of 59.6(1)"d":

a. New jobs supplemental credit; alternative credit for housing assistance programs.

(1) An approved business shall receive a new jobs supplemental credit from withholding in an amount equal to 1½ percent of the gross wages paid by the business, as provided in Iowa Code section 15.331. The supplemental new jobs credit available under this program is in addition to and not in lieu of the program and withholding credit of 1½ percent authorized under Iowa Code chapter 260E. Additional new jobs created by the project, beyond those that were agreed to in the original agreement as described in 261—59.12(15E), are eligible for the additional 1½ percent withholding credit as long as those additional jobs meet the local enterprise zone wage eligibility criteria and are an integral part or a continuation of the new location or expansion. Approval and administration of the supplemental new jobs credit shall follow existing procedures established under Iowa Code chapter 260E. Businesses eligible for the new jobs training program are those businesses engaged in interstate commerce or intrastate commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate commerce, but exclude retail, health or professional services.

(2) As an alternative to the credit described in subparagraph (1) above, a business may provide a housing assistance program in the form of down payment assistance or rental assistance for employees in new jobs, as defined in Iowa Code section 260E.2, who buy or rent housing located within any certified enterprise zone. A business establishing a housing assistance program shall fund this program through a credit from withholding based on the wages paid to the employees participating in the housing assistance program. An amount equal to 1½ percent of the gross wages paid by the employer to each employee participating in the housing assistance program shall be credited from the payment made by an employer pursuant to Iowa Code section 422.16. If the amount of the withholding by the employer is less than 1½ percent of the gross wages paid to the employees, then the employer shall receive a credit against other withholding taxes due by the employer. The employer shall deposit the amount of the credit quarterly into a housing assistance fund created by the business out of which the business shall provide employees enrolled in the housing assistance program with down payment assistance or rental assistance.

(3) A business may enter into an agreement with the county or city designating the enterprise zone pursuant to Iowa Code Supplement section 15E.194 to borrow initial moneys to fund a housing assistance program. The county or city may appropriate from the general fund of the county or city for the assistance program an amount not to exceed an amount estimated by the department of revenue and finance to be equal to the total amount of credit from withholding for employees determined by the business to be enrolled in the program during the first two years. The business shall pay the principal and interest on the loan out of moneys received from the credit from withholding provided for in subparagraph (1). The terms of the loan agreement shall include the principal amount, the interest rate, the terms of repayment, and the term of the loan. The agreement shall require that the down payment assistance or rental assistance provided for employees in new jobs be repaid, in whole or in part, in the event an employee is no longer employed by the business or defaults under the agreement between the business and an employee. The terms of the loan agreement shall not extend beyond the period during which the enterprise zone is certified. The employer shall certify to the department of revenue and finance that the credit from withholding is in accordance with an agreement and shall provide other information the department may require.

The business shall enter into an agreement with each employee receiving down payment or rental assistance. The agreements shall include terms and conditions of the receipt of the assistance and repayment provisions should the employee no longer work for the business or default under the terms of the agreement.

(4) An employee participating in the housing assistance program will receive full credit for the amount withheld as provided in Iowa Code section 422.16.

(5) The 1½ percent supplemental credit authorized under this rule may be apportioned between the 260E training programs described in subparagraph (1) and the down payment or rental assistance program described in subparagraph (2).

b. Value-added property tax exemption.

(1) The county or city for which an eligible enterprise zone is certified may exempt from all property taxation all or a portion of the value added to the property upon which an eligible business locates or expands in an enterprise zone and which is used in the operation of the eligible business. This exemption shall be authorized by the city or county that would have been entitled to receive the property taxes, but is electing to forego the tax revenue for an eligible business under this program. The amount of value added for purposes of Iowa Code section 15E.196 shall be the amount of the increase in assessed valuation of the property following the location or expansion of the business in the enterprise zone.

(2) If an exemption is made applicable only to a portion of the property within an enterprise zone, there must be approved uniform criteria which further some planning objective established by the city or county zone commission. These uniform criteria must also be approved by the eligible city or county. Examples of acceptable “uniform criteria” that may be adopted include, but are not limited to, wage rates, capital investment levels, types and levels of employee benefits offered, job creation requirements, and specific targeted industries. “Planning objectives” may include, but are not limited to, land use, rehabilitation of distressed property, or “brownfields” remediation.

(3) The exemption may be allowed for a period not to exceed ten years beginning the year value added by improvements to real estate is first assessed for taxation in an enterprise zone.

c. Investment tax credit and insurance premium tax credit.

(1) Investment tax credit. An eligible business may claim an investment tax credit as provided in Iowa Code section 15.333. A corporate income tax credit may be claimed of up to a maximum of 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the business in the enterprise zone. If the business is a partnership, subchapter S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. Any credit in excess of tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first. Subject to prior approval by the department in consultation with DRF, an eligible business whose project primarily involves the production of value-added agricultural products may elect to apply for a refund for all or a portion of an unused tax credit. For purposes of this paragraph, an eligible business includes a cooperative as described in Section 521 of the United States Internal Revenue Code which is not required to file an Iowa corporate income tax return, and whose approved project primarily involves the production of ethanol. The refund may be used against a tax liability imposed for individual income tax, corporate income tax, or franchise tax. The business participating in the enterprise zone may not claim an investment tax credit for capital expenditures above the amount stated in the agreement described in 261—59.12(15E). An eligible business may instead seek to amend the contract, allowing the business to receive an investment tax credit for additional capital expenditures, or may elect to submit a new application within the enterprise zone.

(2) Insurance premium tax credit. The insurance premium tax credit benefit is available for a business that submits an application for enterprise zone participation on or after July 1, 1999. If the business is an insurance company, the business may claim an insurance premium tax credit as provided in Iowa Code section 15E.196 as amended by 1999 Iowa Acts, chapter 172, section 2. An Iowa insurance premium tax credit may be claimed of up to a maximum of 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the business in the enterprise zone. Any credit in excess of tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first. The business participating in the enterprise zone may not claim an investment tax credit for capital expenditures above the amount stated in the agreement described in 261—59.12(15E). An eligible business may instead seek to amend the contract, allowing the business to receive an investment tax credit for additional capital expenditures, or may elect to submit a new application within the enterprise zone.

(3) Eligible capital expenditures. For purposes of this rule, the capital expenditures eligible for the investment tax credit or the insurance premium tax credit under the enterprise zone program are the costs of machinery and equipment as defined in Iowa Code section 427A.1(1) “e” and “j” purchased for use in the operation of the eligible business, the purchase prices of which have been depreciated in accordance with generally accepted accounting principles. For the investment tax credit and for the insurance premium tax credit, the cost of improvements made to real property which is used in the operation of the eligible business is an eligible capital expenditure.

(4) Real property. For business applications received on or after July 1, 1999, for purposes of the investment tax credit claimed under Iowa Code section 15.333 and for business applications received on or after May 26, 2000, for purposes of the insurance premium tax credit claimed under Iowa Code section 15.333A, subsection 1, the purchase price of real property and any existing buildings and structures located on the real property will also be considered a new investment in the location or expansion of an eligible business. However, if within five years of purchase, the eligible business sells or disposes of, razes or otherwise renders unusable the land, buildings, or other existing structures for which tax credit was claimed under Iowa Code section 15.333 or under Iowa Code section 15.333A, subsection 1, the income tax liability, or where applicable the insurance premium tax liability, of the eligible business for the year in which the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

1. One hundred percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within one year after being placed in service.
2. Eighty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within two years after being placed in service.
3. Sixty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within three years after being placed in service.
4. Forty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within four years after being placed in service.
5. Twenty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within five years after being placed in service.

(5) Refunds. An eligible business whose project primarily involves the production of value-added agricultural products and whose application was approved by the department on or after May 26, 2000, may elect to receive as a refund all or a portion of an unused investment tax credit.

1. The department will determine whether a business's project primarily involves the production of value-added agricultural products. Effective July 1, 2001, an eligible business that elects to receive a refund shall apply to the department for a tax credit certificate.

2. The business shall apply for a tax credit certificate using the form provided by the department. Requests for tax credit certificates will be accepted between May 1 and May 15 of each fiscal year. Only those eligible businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. For a cooperative described in Section 521 of the United States Internal Revenue Code that is not required to file an Iowa corporate income tax return, the department shall require the cooperative to submit a list of members whom the cooperative wishes to receive a tax credit certificate for their prorated share of ownership. The cooperative shall submit its list in a computerized electronic format that is compatible with the system used or designated by the department. The computerized list shall, at a minimum, include the name, address, social security number or taxpayer identification number, business telephone number and ownership percentage, carried out to six decimal places, of each cooperative member eligible for a tax credit certificate. The cooperative shall also submit a total dollar amount of the unused investment tax credits for which the cooperative's members are requesting a tax credit certificate.

3. The department will make public by June 1 of each year the total number of requests for tax credit certificates and the total amount of requested tax credit certificates that have been submitted. By June 15 of each year any business that has submitted a request for a tax credit certificate for that year may be allowed to amend or withdraw any such request. The department will issue tax credit certificates within a reasonable period of time.

4. The department shall not issue tax credit certificates which total more than \$4 million during a fiscal year. If the department receives applications for tax credit certificates in excess of \$4 million, the applicants shall receive certificates for a prorated amount. In such a case, the tax credit requested by an eligible business will be prorated based upon the total amount of requested tax credit certificates received during the fiscal year. This proportion will be applied to the amount requested by each eligible business to determine the amount of the tax credit certificate that will be distributed to each business for the fiscal year. For example, if an eligible business submits a request in the amount of \$1 million and the total amount of requested tax credit certificates equals \$8 million, the business will be issued a tax credit certificate in the amount of \$500,000:

$$\frac{\$4 \text{ million}}{\$8 \text{ million}} = 50\% \times \$1 \text{ million} = \$500,000.$$

5. Tax credit certificates shall not be valid until the tax year following project completion. The tax credit certificates shall not be transferred except in the case of a cooperative as described in Section 521 of the United States Internal Revenue Code and which is not required to file an Iowa corporate income tax return, and whose approved project primarily involves the production of ethanol. For such a cooperative, the individual members of the cooperative are eligible to receive the tax credit certificates. Tax credit certificates shall be used in tax years beginning on or after July 1, 2001. A business shall not claim a refund of unused investment tax credit unless a tax credit certificate issued by the department is attached to the taxpayer's tax return for the tax year during which the tax credit is claimed. Any unused investment tax credit in excess of the amount of the tax credit certificate issued by the department may be carried forward for up to seven years after the qualifying asset is placed in service or until depleted, whichever occurs first. An eligible business may apply for tax credit certificates once each year for up to seven years after the qualifying asset is placed in service or until the eligible business's unused investment tax credit is depleted, whichever occurs first. For example, an eligible business which completes a project in October 2001 and has an investment tax credit of \$1 million may apply for a tax credit certificate in May 2002. If, because of the proration of the \$4 million of available credits for the fiscal year, the business is awarded a tax credit certificate in the amount of \$300,000, the business may claim the \$300,000 refund and carry forward the unused investment tax credit of \$700,000 for up to seven years or until the credit is depleted, whichever occurs first.

d. Research activities credit. A business is eligible to claim a research activities credit as provided in Iowa Code section 15.335. This benefit is a corporate tax credit for increasing research activities in this state during the period the business is participating in the program. For purposes of claiming this credit, a business is considered to be "participating in the program" for a period of ten years from the date the business's application was approved by the department. This credit equals 6½ percent of the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures. This credit is in addition to the credit authorized in Iowa Code section 422.33. If the business is a partnership, subchapter S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. Any tax credit in excess of the tax liability shall be refunded to the eligible business with interest computed under Iowa Code section 422.25. In lieu of claiming a refund, the eligible business may elect to have the overpayment credited to its tax liability for the following year.

e. Refund of sales, service and use taxes paid to contractors or subcontractors. A business is eligible for a refund of sales, service and use taxes paid to contractors and subcontractors as authorized in Iowa Code section 15.331A.

(1) An eligible business may apply for a refund of the sales and use taxes paid under Iowa Code chapters 422 and 423 for gas, electricity, water or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility within the enterprise zone.

(2) Taxes attributable to intangible property and furniture and furnishings shall not be refunded. To receive a refund of the sales, service and use taxes paid to contractors or subcontractors, the eligible business must, within one year after project completion, make an application to DRF. For new manufacturing facilities, "project completion" means the first date upon which the average annualized production of finished product for the preceding 90-day period at the manufacturing facility operated by the eligible business within the enterprise zone is at least 50 percent of the initial design capacity of the facility. For existing facilities, "project completion" means the date of completion of all improvements included in the enterprise zone project.

f. New jobs insurance premium tax credit. If the eligible business is an insurance company, the business may claim an insurance premium tax credit as provided in Iowa Code section 15.333A. This new jobs insurance premium tax credit may be taken by an eligible business which has entered into an Iowa Code chapter 260E agreement with a vocational school or community college, and which has increased its base employment level in Iowa by at least 10 percent within the time set in the 260E training agreement. In the case of an eligible business without a base employment level, if the business adds new jobs within the time set in the 260E agreement, it is entitled to this new jobs insurance premium tax credit for the tax period to be selected by the business. In determining if the business has increased its base employment by 10 percent, only those new jobs resulting from the project covered by the 260E agreement shall be counted.

The new jobs insurance premium tax credit as provided in Iowa Code section 15.333A is determined by multiplying the qualifying taxable wages of new employees by 6 percent. For purposes of this credit, "qualifying taxable wages" is the amount of taxable wages upon which an employer is required to pay state of Iowa unemployment compensation fund taxes for new employees in new jobs. This insurance premium tax credit may be claimed in any reporting period which either begins or ends during the period beginning with the date of the 260E agreement and ending with the date by which the 260E training agreement is to be completed. Any credit in excess of the insurance premium tax liability for the year may be credited to the tax liability for the following seven years, or until depleted, whichever is earlier. This new jobs insurance premium tax credit is in lieu of, and not in addition to, the new jobs tax credit as stated in Iowa Code section 422.11A.

g. Limitation on receiving incentives. A business, other than a development business as defined in rule 261—59.9(79GA, HF349), that is eligible to receive incentives and assistance under subrule 59.6(1) is not eligible to receive the following incentives and assistance if these incentives and assistance were previously approved for a development business:

(1) An investment tax credit received for the purchase price of land or improvements to real property. An eligible business that is not a development business may only claim an investment tax credit on additional, new improvements made to real property provided that these improvements were not included in the development business's approved application for benefits.

(2) The refund of sales, service, and use taxes paid to contractors or subcontractors as described in paragraph 59.6(3)"e." An eligible business that is not a development business may only claim a refund of sales, service and use taxes paid to contractors or subcontractors for new buildings or additions to existing buildings for improvements made to real property provided that these improvements were not included in the development business's approved application for benefits.

(3) Value-added property tax exemptions. An eligible business that is not a development business may not claim a value-added property tax exemption for improvements to real property if the development business has received a property tax exemption due to those improvements to the real property.

59.6(4) *Duration of benefits.* An enterprise zone designation shall remain in effect for ten years following the date of certification. Any state or local incentives or assistance that may be conferred must be conferred before the designation expires. However, the benefits of the incentive or assistance may continue beyond the expiration of the zone designation.

59.6(5) *Application review and submittal.* Eligible businesses shall first submit applications for enterprise zone program benefits to the local enterprise zone commission. Commission-approved applications shall be forwarded to the department for final review and approval.

261—59.7(15E) Alternative eligible business.

59.7(1) *Requirements.* A business which is not located in an enterprise zone is eligible to receive incentives and assistance under the enterprise zone program if the business meets all of the following criteria:

a. No closure or reduction. The business has not closed or reduced its operation in one area of the state and relocated substantially the same operation in a location which qualifies the business under this rule. This requirement does not prohibit a business from expanding its operation in a location which qualifies the business under this rule if existing operations of a similar nature in the state are not closed or substantially reduced.

b. No retail. The business is not a retail business or a business whose entrance is limited by a cover charge or membership requirement.

c. Employee benefits. The business provides all full-time employees with the option of choosing one of the following:

(1) The business pays 80 percent of both of the following:

1. The cost of a standard medical insurance plan, and
2. The cost of a standard dental insurance plan or an equivalent plan.

(2) The business provides the employee with a monetarily equivalent plan to the plan provided for in subparagraph (1) above.

d. Job creation. The business expansion or location must result in at least ten full-time project jobs and those project jobs must be maintained for at least ten years. The business shall create these jobs within three years of the effective date of the business's agreement with the department and the city or county, as appropriate. The business shall include in its strategic plan the time line for job creation. If the existing business fails to meet the ten-job creation requirement within the five-year period, all incentives and assistance will cease immediately.

e. Capital investment. The business makes a capital investment of at least \$500,000. If the business will be occupying a vacant building suitable for industrial use, the fair market value of the building and land, not to exceed \$250,000, as determined by the city, shall be counted toward the capital investment requirement. An existing business that has been operating for at least five years is exempt from the capital investment requirement of this paragraph of up to \$250,000 of the fair market value, as established by an appraisal, of the building and land. The capital investment amount stated in the business's application must be completed within three years of the effective date of the agreement described in rule 59.12(15E).

f. City population limits. The business must be or plan to be located in a city with a population between 8,000 and 24,000 as determined by population estimates by the United States Bureau of the Census for the year 1995.

g. Proximity to enterprise zone. The business must currently be or plan to be located in a city which is not more than 35 miles from an existing enterprise zone in this state or an equivalent zone in an adjacent state.

h. NJIP (new jobs and income program) wage levels. The business shall comply with the wage requirements of Iowa Code section 15.329(1)“d.” This section of the Iowa Code requires the business to agree to pay a median wage for new full-time hourly nonmanagement production jobs of at least \$11 per hour indexed to 1993 dollars based on the gross national product implicit price deflator published by the Bureau of Economic Analysis of the United States Department of Commerce or 130 percent of the average wage in the county in which the community is located, whichever is higher.

i. Distress criteria. The business must currently be or plan to be located in an area that meets two of the criteria listed below:

- (1) The area has a per capita income of \$9,600 or less based on the 1990 census.
- (2) The area has a family poverty rate of 12 percent or higher based on the 1990 census.
- (3) Ten percent or more of the housing units in the area are vacant.
- (4) The valuations of each class of property in the designated area are 75 percent or less of the citywide average for that classification based upon the most recent valuations for property tax purposes.
- (5) The area is a blighted area, as defined in Iowa Code section 403.17.

j. City approval. The business must receive approval by ordinance or resolution from the city in which the project is located.

59.7(2) Benefits. A business that qualifies under the “alternative eligible business” category is eligible to receive the following benefits:

- a.* A new jobs supplemental credit as described in paragraph 59.6(3)“a.”
- b.* A value-added property tax exemption as described in paragraph 59.6(3)“b.”
- c.* An investment tax credit as detailed in paragraph 59.6(3)“c.”
- d.* A research activities credit as outlined in paragraph 59.6(3)“d.”
- e.* A sales, service, and use tax refund credit as described in paragraph 59.6(3)“e.”
- f.* A new jobs insurance premium tax credit as described in paragraph 59.6(3)“f.”

The duration of these benefits shall be the same as set forth in subrule 59.6(4).

59.7(3) Application submittal and review. After approval of a project by ordinance or resolution, the city shall submit an application directly to the department.

261—59.8(15E) Eligible housing business. An eligible housing business includes a housing developer or housing contractor.

59.8(1) Requirements. A housing business shall satisfy all of the following as conditions to receiving the benefits described in this rule.

- a.* The housing business must build or rehabilitate either:
 - (1) A minimum of four single-family homes located in that part of a city or county in which there is a designated enterprise zone, or
 - (2) One multiple dwelling unit building containing three or more individual dwelling units located in that part of a city or county in which there is a designated enterprise zone.
- b.* The single-family homes and dwelling units which are rehabilitated or constructed by the housing business shall be modest homes or units, but shall include the necessary amenities. When completed and made available for occupancy, the single-family homes and dwelling units shall meet the United States Department of Housing and Urban Development’s housing quality standards and local safety standards.
- c.* The eligible housing business shall complete its building or rehabilitation within two years from the time the business begins construction on the single-family homes and dwelling units. The failure to complete construction or rehabilitation within two years shall result in the eligible housing business becoming ineligible and subject to the repayment requirements and penalties in rule 261—59.13(15E).

d. An eligible housing business shall provide the enterprise zone commission with all of the following information:

(1) The long-term plan for the proposed housing development project, including labor and infrastructure needs.

(2) Information dealing with the benefits the proposed housing development project will bring to the area.

(3) Examples of why the proposed development project should be considered a good housing development project.

(4) An affidavit that it has not, within the last five years, violated state or federal environmental and worker safety statutes, rules, and regulations or if such violations have occurred that there were mitigating circumstances or such violations did not seriously affect public health or safety or the environment.

59.8(2) *Benefits.* A business that qualifies under the “eligible housing business” category may be eligible to receive the following benefits for a period of ten years:

a. Investment tax credit. An eligible housing business, subject to negotiations with the department, may claim an investment tax credit up to a maximum of 10 percent of the new investment which is directly related to the building or rehabilitating of a minimum of four single-family homes located in that part of a city or county in which there is a designated enterprise zone or one multiple dwelling unit building containing three or more individual dwelling units located in that part of a city or county in which there is a designated enterprise zone. The new investment that may be used to compute the tax credit shall not exceed the new investment used for the first \$140,000 of value for each single-family home or for the first \$140,000 of value for each unit of a multiple dwelling unit building containing three or more units. The tax credit may be used to reduce tax liabilities imposed under Iowa Code chapter 422, Division II—personal net income tax; Division III—income taxes on corporations; or Division V—franchise tax on financial institutions. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. If the business is a partnership, subchapter S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro-rata share of the individual’s earnings of the partnership, subchapter S corporation, limited liability company, or estate or trust.

b. Sales, service, and use tax refund. An approved housing business shall receive a sales, service, and use tax refund as described in paragraph 59.6(3) “e.”

59.8(3) *Application submittal and review.* An eligible housing business shall first submit an application to the commission for approval. The commission shall forward applications that it has approved to receive benefits and assistance to the department for final review and approval.

261—59.9(79GA,ch141) Eligible development business. An eligible development business includes a developer or development contractor.

59.9(1) *Requirements.* A development business shall satisfy all of the following conditions to receive the benefits described in this rule.

a. The development business must construct, expand or rehabilitate a building space with a minimum capital investment of at least \$500,000. There are two partial exemptions to the \$500,000 investment requirement:

(1) If the development business will be buying a vacant building suitable for industrial use, the fair market value of the building and land, not to exceed \$250,000 as determined by the local enterprise zone commission, shall be counted toward the minimum \$500,000 capital investment requirement.

(2) If the development business will be rehabilitating an existing building space that has been located within an area for at least five years and that area has been certified as an enterprise zone, the fair market value as established by an appraisal of the building, not to exceed \$250,000, shall be counted toward the minimum \$500,000 capital investment requirement. Only one of these two exemptions may be used as an exemption by the development business in meeting the minimum capital investment requirement of at least \$500,000.

b. Upon completion of the project, an approved development business shall not allow a retail business to occupy space within the building space described in the development business's application.

c. The eligible development business shall complete its construction, expansion or rehabilitation within three years from the time the business receives approval from the department. The failure to complete construction, expansion or rehabilitation within three years shall result in the eligible development business's becoming ineligible and subject to the repayment requirements and penalties in rule 261—59.14(15E).

d. Prior to applying for assistance under this rule, an eligible development business shall enter into an agreement with at least one nondevelopment business for purposes of locating the business in all or a portion of the building space for a period of at least five years.

e. An eligible development business shall provide the local enterprise zone commission with all of the following information:

(1) The long-term strategic plan for the proposed development project, including infrastructure needs, and a copy of any agreement entered into by the eligible business as required under paragraph 59.9(1) "*d.*"

(2) Information describing the benefits the development project will bring to the area.

(3) Examples to illustrate why the proposed development project should be considered a good business enterprise.

(4) An affidavit that the business has not, within the last five years, violated state or federal environmental and worker safety statutes, rules, and regulations, or if such violations have occurred, that there were mitigating circumstances or such violations did not seriously affect public health or safety or the environment.

59.9(2) Benefits. A business that qualifies under the eligible development business category may be eligible to receive the following benefits for a period of up to ten years:

a. Investment tax credit. An eligible development business, subject to negotiations with the department, may claim a tax credit up to a maximum of 10 percent of the new investment which is directly related to the construction, expansion or rehabilitation of building space to be used for manufacturing, processing, cold storage, distribution, or office facilities. For purposes of this paragraph, "new investment" means the purchase price of land and the cost of improvements made to real property. This tax credit may be claimed by an eligible development business beginning in the tax year in which the construction, expansion or rehabilitation is completed. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. The tax credit may be used to reduce tax liabilities imposed under Iowa Code chapter 422, Division II—personal net income tax; Division III—income taxes on corporations; Division V—franchise tax on financial institutions; or the tax credit may instead be used to offset the tax liability imposed under Iowa Code chapter 432, premium taxes on insurance companies. If the business is a partnership, subchapter S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro-rata share of the individual's earnings of the partnership, subchapter S corporation, limited liability company, or estate or trust.

b. Sales, service, and use tax refund. An approved development business shall receive a sales, service, and use tax refund as described in paragraph 59.6(3) "*e.*"

c. Value-added property tax exemption. The county or city for which an eligible enterprise zone is certified may exempt from all property taxation all or a portion of the value added to the property upon which an eligible development business constructs, expands or rehabilitates property in an enterprise zone. This exemption shall be authorized by the city or county that would have been entitled to receive the property taxes, but is electing to forego the tax revenue for an eligible development business under this program. The amount of value added for purposes of Iowa Code section 15E.196 shall be the amount of the increase in assessed valuation of the property following the construction, expansion or rehabilitation of the development business in the enterprise zone. If an exemption is made applicable only to a portion of the property within an enterprise zone, there must be approved uniform criteria which further some planning objective established by the city or county enterprise zone commission. These uniform criteria must also be approved by the eligible city or county. Examples of acceptable uniform criteria that may be adopted include, but are not limited to, wage rates, capital investment levels, types and levels of employee benefits offered, job creation requirements, and specific targeted industries. Planning objectives may include, but are not limited to, land use, rehabilitation of distressed property, or brownfield remediation. The exemption may be allowed for a period not to exceed ten years beginning in the year in which value added by improvements to real estate is first assessed for taxation in an enterprise zone. The exemption is allowed for the development business only. Any succeeding owner of the building space is not eligible to receive the value-added property tax exemption.

59.9(3) *Limitation on receiving incentives.* A business which is not a development business that is eligible to receive incentives and assistance under subrule 59.6(1) is not eligible to receive the following incentives and assistance if these incentives and assistance were previously approved for a development business:

a. An investment tax credit received for the purchase price of land or improvements to real property. An eligible business that is not a development business may only claim an investment tax credit on additional new improvements made to real property provided that these improvements were not included in the development business's approved application for benefits.

b. The refund of sales, service, and use taxes paid to contractors or subcontractors as described in paragraph 59.6(3)“*e.*” An eligible business that is not a development business may only claim a refund of sales, service and use taxes paid to contractors or subcontractors for new buildings or additions to existing buildings for improvements made to real property provided that these improvements were not included in the development business's approved application for benefits.

c. Value-added property tax exemptions. An eligible business that is not a development business may not claim a value-added property tax exemption for improvements to real property if the development business has received a property tax exemption due to those improvements to the real property.

59.9(4) *Application submittal and review.* An eligible development business shall first submit an application to the commission for approval. The commission shall forward applications that it has approved to receive benefits and assistance to the department for final review and approval.

261—59.10(15E) Commission review of businesses' applications.

59.10(1) Additional commission eligibility requirements. Under the Act, a commission is authorized to adopt additional eligibility requirements related to compensation and benefits that businesses within a zone must meet in order to qualify for benefits. Additional local requirements that may be considered could include, but are not limited to, the types of industries or businesses the commission wishes to receive enterprise zone benefits; requirements that preference in hiring be given to individuals who live within the enterprise zone; higher wage eligibility threshold requirements than would otherwise be required; higher job creation eligibility threshold requirements than would otherwise be required; the level of benefits required; local competition issues; or any other criteria the commission deems appropriate. If a commission elects to adopt more stringent requirements than those contained in the Act and these rules for a business to be eligible for incentives and assistance, these requirements shall be submitted to the department.

59.10(2) Application. The department will develop a standardized application that it will make available for use by a business applying for benefits and assistance as an eligible business, an alternative eligible business, an eligible housing business or an eligible development business. The commission may add any additional information to the application that it deems appropriate for a business to qualify as an eligible business, an eligible housing business or an eligible development business. If the commission determines that a business qualifies for inclusion in an enterprise zone and that it is eligible for benefits under the Act, the commission shall submit an application for incentives or assistance to the department.

261—59.11(15E) Other commission responsibilities.

59.11(1) Commissions have the authority to adopt a requirement that preference in hiring be given to individuals who live within the enterprise zone. If it does so, the commission shall work with the local workforce development center to determine the labor availability in the area.

59.11(2) Commissions shall examine and evaluate building codes and zoning in enterprise zones and make recommendations to the appropriate governing body in an effort to promote more affordable housing development.

261—59.12(15E) Department action on eligible applications. The department may approve, deny, or defer applications from qualified businesses. In reviewing applications for incentives and assistance under the Act, the department will consider the following:

59.12(1) Compliance with the requirements of the Act and administrative rules. Each application will be reviewed to determine if it meets the requirements of the Act and these rules. Specific criteria to be reviewed include, but are not limited to: medical and dental insurance coverage; wage levels; number of jobs to be created; and capital investment level.

59.12(2) Competition. The department shall consider the impact of the eligible business on other businesses in competition with it and compare the compensation package of businesses in competition with the business being considered for incentives and assistance under this program, to ensure an overall economic gain to the state.

59.12(3) Displacement of workers. The department will make a good-faith effort to determine the probability that the proposed incentives will displace employees of existing businesses. In determining the impact on businesses in competition with the business seeking incentives or assistance, jobs created as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created.

59.12(4) *Violations of law.* The department will review each application to determine if the business has a record of violations of law. If the department finds that an eligible business, alternative eligible business, or an eligible housing business has a record of violations of the law including, but not limited to, environmental and worker safety statutes, rules, and regulations over a period of time that tends to show a consistent pattern, the business shall not qualify for incentives or assistance under 1998 Iowa Acts, House Files 2164 and 2538 or Iowa Code Supplement section 15E.196, unless the department finds that the violations did not seriously affect public health or safety or the environment, or if they did that there were mitigating circumstances. If requested by the department, the business shall provide copies of materials documenting the type of violation, any fees or penalties assessed, court filings, final disposition of any findings and any other information which would assist the department in assessing the nature of any violation.

59.12(5) *Commission's recommendations and additional criteria.* For each application from a business, the department will review the local analysis (including any additional local criteria) and recommendation of the enterprise zone commission in the zone where the business is located, or plans to locate.

59.12(6) *Other relevant information.* The department may also review an application using factors it reviews in other department-administered financial assistance programs which are intended to assess the quality of the jobs pledged.

59.12(7) *Negotiations.* The department may enter into negotiations regarding the amount of tax incentives and assistance the business may be eligible to receive. The department reserves the right to negotiate the amount of all program benefits except the following benefits: the new jobs supplemental credit; the value-added property tax exemption; and the refund of sales, service and use taxes paid to contractors and subcontractors. The criteria to be used in the negotiations to determine the amount of tax incentives and assistance are as described in subrule 59.5(2) and are subject to the limitations stated in subrule 59.5(3).

261—59.13(15E) *Agreement.* After the department negotiates and approves the application and the amount of incentives and assistance that the business shall receive, the department and the city or county, as applicable, shall enter into an agreement with the business. The term of the agreement shall be ten years from the agreement effective date plus any additional time necessary for the business to satisfy the job maintenance requirement. This three-party agreement shall include, but is not limited to, provisions governing the number of jobs to be created, representations by the business that it will pay the wage and benefit levels pledged and meet the other requirements of the Act as described in the approved application, reporting requirements such as an annual certification by the business that it is in compliance with the Act, the amount or level of tax incentives and assistance that the business shall receive as negotiated by the department, and the method for determining the amount of incentives or assistance received by the business which will be repaid in the event of failure to maintain the requirements of the Act and these rules. In addition, the agreement will specify that a business that fails to maintain the requirements of the Act and these rules shall not receive incentives or assistance for each year during which the business is not in compliance.

261—59.14(15E) *Compliance; repayment requirements; recovery of value of incentives.*

59.14(1) *Annual certification.* A business that is approved to receive incentives or assistance shall, for the length of its designation as an enterprise zone business, certify annually to the county or city, as applicable, and the department its compliance with the requirements of the Act and these rules.

59.14(2) *Repayment.* If a business has received incentives or assistance under 1998 Iowa Acts, House Files 2164 and 2538, or Iowa Code Supplement section 15E.196 and fails to meet and maintain any one of the requirements of the Act or these rules to be an eligible business, the business is subject to repayment of all or a portion of the incentives and assistance that it has received.

59.14(3) Calculation of repayment due. If a business fails in any year to meet any one of the requirements of the Act or these rules to be an eligible business, it is subject to repayment of all or a portion of the amount of incentives received.

a. Failure to meet/maintain requirements. If a business fails in any year to meet or maintain any one of the requirements of the Act or these rules, except its job creation requirement which shall be calculated as outlined in paragraph “b” below, the business shall repay the value of the incentives received for each year during which it was not in compliance. If a development business, within five years of project completion, or its successor, sells or leases any space to any retail business, the development business shall proportionally refund the value of any tax credits, refunds or property tax exemptions that were claimed under this program.

b. Job creation shortfall. If a business does not meet its job creation requirement, repayment shall be calculated as follows:

(1) If the business has met 50 percent or less of the requirement, the business shall pay the same percentage in benefits as the business failed to create in jobs.

(2) More than 50 percent, less than 75 percent. If the business has met more than 50 percent but not more than 75 percent of the requirement, the business shall pay one-half of the percentage in benefits as the business failed to create in jobs.

(3) More than 75 percent, less than 90 percent. If the business has met more than 75 percent but not more than 90 percent of the requirement, the business shall pay one-quarter of the percentage in benefits as the business failed to create in jobs.

59.14(4) Calculation of repayment due for a development business. The proportion of any tax credits, refunds or property tax exemptions claimed that are due for repayment if a development business, or its successor, sells or leases building space to a retail business will be determined by dividing the square footage of building space occupied by the retail business by the total square footage of the total building space as described in the application and approved for benefits under this program.

59.14(5) DRF; county/city recovery. Once it has been established, through the business’s annual certification, monitoring, audit or otherwise, that the business is required to repay all or a portion of the incentives received, the department of revenue and finance and the city or county, as appropriate, shall collect the amount owed. The city or county, as applicable, shall have the authority to take action to recover the value of taxes not collected as a result of the exemption provided by the community to the business. The department of revenue and finance shall have the authority to recover the value of state taxes or incentives provided under Iowa Code section 15E.193A or 15E.196. The value of state incentives provided under Iowa Code section 15E.193A or 15E.196 includes applicable interest and penalties.

These rules are intended to implement Iowa Code sections 15.333, 15.333A, 15E.191 to 15E.196 and 2001 Iowa Acts, chapter 141.

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